IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.3.2006

Coram:

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

Crl.A.No.1231 of 2003

Palani .. Appellant

vs.

State rep.by
Inspector of Police,
Mathikonepalayam Police Station,
Crime No.67/96
Dharmapuri District .. Respondent

Appeal against the judgment dated 31.10.2001 made in S.C.No.112 of 1998 on the file of First Additional Sessions Judge, Krishnagiri, Dharnmapuri District.

For Appellant : Mr.M.G.L.Sankaran
For Respondent : Mr.V.M.R.Rajendran,A.P.P.

JUDGMENT

(Judgment of the Court was delivered by R.BALASUBRAMANIAN,J.)

The appellant stands convicted in S.C.No.112 of 1998 on the file of First Additional Sessions Judge, Krishnagiri, Dharnmapuri District by judgment dated 31.10.2003 for an offence under Section 302 IPC for which he stands sentenced to undergo imprisonment for life together with a fine of Rs.2,000/- carrying a default sentence. Heard Mr.M.G.L.Sankaran, learned counsel appearing for the appellant and Mr.V.M.R.Rajendran, learned Additional Public Prosecutor for the State.

2. The prosecution case is that at about 6.00 p.m. on 26.1.1996, due to prior enmity, the accused murdered the victim by name Perumal by severing his head and thus committing his murder. To substantiate their case, the prosecution examined P.Ws.1 to 13, besides exhibiting Exs.P.1 to P.32 and marking M.Os.1 to 12. The defence neither brought in any documentary nor oral evidence.

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3. Perumal is the deceased in this case. He is the younger brother of P.Ws.1 and 2. In other words P.Ws.1 and 2 are his sisters. P.W.1's evidence is to the following effect:

> "Her husband died four years ago and therefore, she was living with her mother; her mother is the first wife of her father and Kaliammal is his second wife; the accused is the son through the second wife; her father partitioned the family properties by giving two units to his first wife's branch and one unit to his second wife's branch; the accused did not like that division and therefore, he was quarrelling; even in irrigating the land from the common well by rotation, there was a quarrel. Palani is yet another accused in this case, arrayed as A2 and his father is Chinnaswamy (This Court is informed that the said second accused, who participated in the crime along with the present appellant was murdered prior to the final report filed in this case). On the occurrence day at about 6.00 a.m. the deceased was proceeding to irrigate the land followed by P.Ws 1 and 2; the accused and the deceased Palani were waiting near the well by hiding themselves; when Pepumal went near the well, immediately the accused cut him on his neck with a Koduval; the other accused Palani also cut him on his neck; the accused took the severed neck and put it in a bag and then went away by taking the weapon in his hand; the other accused palani (deceased) leaving the weapon in the near by place, ran away; message was sent to the house and her mother came; all of them were there till 2.00 p.m; when the police came along with the severed head, they identified the head as that of their brother Perumal, police examined them and M.Os.1 (series) are the weapons used by the accused.

P.W.2's evidence is on the same line as spoken to by P.W.1.

4. P.W.13 is the Inspector of Police in the investigating police station. At about 8.15 a.m. on 26.1.1996, when he was in the police station, the accused appeared before him with the severed head of the deceased in this case covering it with a bedspread along with the blood strained weapon. The accused gave a statement, which was recorded in the presence of P.W.3. The statement was read over to the accused and then his signature was obtained in it. P.W.3 also attested the said statement. Ex.P.27 is the said statement. He registered that complaint in Crime No.67 of 1996 under Section 302 IPC. Ex.P.28 is the express FIR. He sent the express records to the Court as well as the higher officials. At about 9.00 a.m. he commenced investigation after sending a message to the police photographer. He arrested the accused at 9.00 a.m. and found that the sleeveless banian, which he was wearing was blood strained. That banian along with lungi and cap were recovered under Form-95, after giving a change of dress to the accused. He recovered the weapon of offence and

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the bedspread. Then, he caused photographs of the severed head, weapon and the bedspread to be taken. Then he prepared Ex.P3, the observation mahazar in the presence of witnesses. Ex.P.29 is the rough sketch prepared by him. From 9.30 a.m. till 12.00 noon he conducted inquest over the severed head of the deceased in this case. Ex.P.13 is the inquest report. He examined P.W.3 and others and recorded their statements. At about 12.00 noon, along with the witnesses, he went to the scene of occurrence taking the severed head in a separate car. The trunk of deceased Perumal was found lying in the agricultural land. Then he made arrangement to cause photographs of the scene of occurrence to be taken. At 1.30 p.m. in the presence of P.W.5 and another, he prepared the observation mahazar, Ex.P.4. Ex.P31 is the rough sketch. Then he attached the severed head to the trunk of the deceased and conducted inquest over that body from 1.30 p.m. to 5.00 p.m. Ex.P.32 is the inquest report. He examined P.Ws.1, 2 and recorded their statements. Then he sent the severed head and the trunk to the Government Hospital at Dharmapuri for post-mortem through a police constable with a requisition.

5. P.W.11 is the official photographer. As requested by the investigating officer in this case, he reached the police station, where he took photographs of the severed head. Ex.P14(series) and Ex.P15 (series) are the photographs and the negatives. Then he reached the scene of occurrence along with the police and took photographs of the trunk. Exs.P16 and P.17 (series) are the photographs and the negatives. Thereafter, the severed head was attached to the trunk. He again took photographs. Exs.P.18 and P.19 are the photographs and the negatives. At the scene of occurrence, the severed head was photographed separately and the trunk was also photographed separately. They are Exs.P20 and P.21, respectively. Exs.P22 and P.23 are the photographs and the negatives of the weapon of offence found there. Then he took photographs of the area surrounding the well and they are Exs.P24 and P.25. P.W.10 is the Grade-I Police Constable in the investigating police station. He collected the express records from the investigating officer and handed over the same at 10.00 a.m. to Judicial Magistrate No.I, Dharmapuri. He also handed over the copies of those records to the higher officials. P.W.9 is the Police Constable, who accompanied the trunk as well as the severed head to the Government Hospital at Dharmapuri for post-mortem. He identified to P.W.7 the severed head and the trunk. He was present throughout post-mortem. After post-mortem, he handed over the corpse to his relatives. He removed M.Os.10 and 12 from the dead body and handed over the same to the investigating officer.

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6. P.W.7 is the duty Doctor in the Government Hospital at Dharmapuri and as per Ex.P.6, requisition sent by the Investigating officer, he conducted post-mortem on the dead body. During post-mortem, he found various symptoms as noted by him in Ex.P7, the post-mortem report. The symptoms are as here under:

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"Appearance found at the post-mortem "சுமாராண உடல்வாகு, தலை துண்டிக்கப்பட்டு தனியாக உள்ளது.
வெளிக்காயங்கள்

1. கழுத்தின் மத்தியில் வெட்டப்பட்டக் காயம். தலை துண்டிக்கப்பட்டுள்ளது.

2. இடது மணிக்கட்டு அருகில் வெட்டுகாயம் 6 ஒ 4 செ.மீ
எலும்பின் ஆழம் எலும்ப, முறிந்து வெளியில் காணப்பட்டது.

3.இடது முன்கை முழங்கை அருகில் இரண்டு வெட்டுக்காயங்கள் 5 ஒ 3 செ.மீ ஒ எலும்பின் ஆழம்.

4. இடது அல்லையில் வீக்கக் காயம் 8 ஒ 6 செ.மீ

5. இடது தோள்பட்டை 3 ஒ 2 செ.மீ வீக்கக் காயம்.

6. வலது தோள்பட்டை 3 ஒ 2 செ.மீ ஒ எலும்பின் ஆழம் வெட்டு

7. இடது கட்டை விரல் வெட்டுக்காயம் 2 ஒ 1 செ.மீ ஒ எலும்பின் ஆழம்

8. இடது ஆட்காட்டி விரல் வெட்டுக்காயம் 2 ஒ 1 செ.மீ ஒ எலும்பின் ஆழம்

9. வலது முன்கை மணிக்கட்டு அருகில் வெட்டுக்காயம், னக துண்டிக்கப்பட்டு தோல் மட்டும் ஒட்டிக் கொண்டு இருந்தது.

10. வலது முன்கை முழங்கை அருகில் 4 ஒ 2 செ.மீ ஒ எலும்பின் ஆழம் வெட்டுக்காயம்.

11. வலது முழங்கை அருகில் 4 ஒ 2 செ.மீ ஒ எலும்பின் ஆழம் வெட்டுக்காயம்

12. வலது ப,ஜத்தில் இரண்டு வெட்டுக்காயங்கள் 2 ஒ 1 செ.மீ ஒ எலும்பின் ஆழம்.
உள் உறுப்ப, ஆய்வீ,
தலை, ஏலும்ப, முறிவ, இல்லை. மூளை சிதைவ, இல்லை. குருதிக் கட்டிகள் இல்லை. கழுத்தீ கழுத்து வெட்டுக்காயம். கழுத்து முதுகு எலும்ப, 4, சிதைந்து உடைந்துள்ளது. தண்டு வடம் வெட்டப்பட்டு துண்டித்த நிலை. கழுத்து இரத்தகுழாய்கள் மூச்சுக் குழல் உணவுக்குழல் தசைகள் வெட்டபபட்டு துண்டிக்கப்பட்ட நிலையில் இருந்தன. குருதி உறைந்துள்ளது. வலது முன்கீ இரு எலும்ப,கள் முறிவ. இடது முன்கை ° முழங்கை அருகிலும் மணிக்கட்டு அருகிலும் இரு எலும்ப, முறிவ,. வலது முழங்காலீ சிப்ப , எலும்ப, முறிவ,. மார்ப், காலார் எலும்ப,, விலா எலும்ப, இல்லை. நுரையீரலீ. காயங்கள் இல்லை. இருதயமீ குருதி இல்லை ' காயம் இல்லை. வயற்று இரைப்பீ உணவ, இல்லை. சிறுகுடல் பெருங்குடல் வெளிர் நிறம். கல்லீரல் சிறுநீரகம். மண்ணீரல் காயங்கள் இல்லை. குருதி உறைந்துள்ளது. சிறுநீர்பை காலியாக உள்ளது. கழுத்து எலும்ப, தசைகளுடன் மேல்நிலை பரிசோதனைக்காக பாதுகாக்கப்பட்டுள்ளது."

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The Doctor is of the opinion that death would have occurred 30 to 32 hours prior to autopsy, due to the severance of the spinal card and death would have been instantaneous. The weapon shown to him in Court, if used, could have severed the head. The rest of the injuries must have been caused when the weapon is used indiscriminately. P.W.12 is the Professor of Forensic Medicine in the Government Mohan Kumaramangalam Hospital and College at Salem. The spinal card of Perumal(deceased) and the skin piece of tissues around the neck were sent to him for examination. The head bone and the bones of the trunk were also sent to him for examination. After examination, he gave the report Ex.P.26 opining that both the bones which he had examined, belong to one and the same person. He would also give evidence that head could be severed by cutting with an aruval.

7. P.W.13 continued the investigation further. From the scene of occurrence, he recovered blood stained slush; sample slush and blood stained weapon found lying 20 feet away from the place where the dead body was lying in the presence of P.W.5 and another through a mahazar. P.W.8 is the Magisterial Clerk, who speaks about the receipt of the case properties along with Ex.P.8 requisition given by the Investigating Officer for subjecting the same for chemical examination and sending the case properties to the laboratory, as an enclosure to Court's letters Exs.P9 and 10. Ex.P.11 is the Chemical Examiner's Report in response to Ex.P.9 and Ex.P.12 is the Chemical examiner's report in response to Ex.P.10. Ex.P13 is the Serologist's Report. P.W.3 is the Village Administrative Officer. He had given the complaint to the investigating police station on 25.1.1996. To enquire about it, he went to the investigating police station at about 8.00 a.m. on 26.1.1996 and when he was talking to the investigating officer at about 8.10 a.m., the accused appeared before the police station along with a bulging cloth bundle kept under his left arm. The said person declared that he had killed his cousin and brought the severed head. The investigating officer asked the accused to keep the severed head and accordingly, the accused removed the severed head and weapon from the bulging cloth bundle and then placed it. The accused gave a statement regarding the occurrence, which was reduced into writing by the investigating officer. The investigating officer read it over to him and then the accused signed in it. P.W.3 also attested it. Ex.P1 is the signature in that statement. M.Os.2,3,4 and 5 namely, blood stained bed-sheet; lungi; blood stained sleeveless inner banian and a brown colour cap were recovered under form 95-Ex.P2. Then P.W.3 attested it. Ex.P.3 is the observation mahazar evidencing the surrender of the accused in the police station. From the Village, P.W.4-Govindan and Chinnaswamy came and identified the severed head as that of Perumal. M.O.6 is the weapon of offence produced by the accused at the police station.

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8. P.W.4 is a resident of the same Village. He speaks about the property dispute between the parties. At about 7.00 a.m. on 26.1.96 when he was proceeding to the teashop to have a cup of tea, there was a talk that the accused after severing the head of Perumal, since deceased in this case, had gone to the police station. He immediately went to the police station with the company of others and reached the police station at about 9.00 a.m. where he saw the investigating officer examining the accused keeping the severed head of Perumal and the weapon of offence. He identified the severed head therein as that of Perumal. He was also present when the severed head was attached to the trunk at the scene of occurrence. P.W.5 witnessed the preparation of Ex.P4, the Observation Mahazar and the recovery of M.Os.7 to 9 from the scene of occurrence through Ex.P.4. P.W.6 is an agriculturist by profession. He owns a sugar cane crushing unit. He knows the deceased as well as the accused. The accused was already employed under him. On 26.1.1996 around 7.30 a.m. when he was in his crushing unit, the accused came there. He confessed at that time that he had killed his cousin Perumal and came there with the severed head and the weapon of offence covered in a bed-sheet. P.W.6 asked him as to why he came there and instead he ought to have gone to the police station. P.W.6 also stated that he does not want to see the severed head. The accused replied that he did not have any money and therefore, giving him a sum of Rs.10/- asked him to go to the police station and surrender. He would say that out of fear, he did not want to see the severed head. The accused then left that place. P.W.13 continued the investigation by examining other witnesses. He sent the case properties to the Court with a requisition to send the same for chemical examination. After completing all the legal formalities, he filed the final report in the Court against the accused on 30.3.1996 under Section 302 IPC. When the accused was questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against him, he denied each and every circumstances put up against him as false and contrary to facts. He neither let in any oral nor brought in any documentary evidence.

9. Mr.M.G.L.Sankaran, learned counsel for the appellant would contend that Ex.P.27 is in the nature of a confession statement of the accused given to the Police and therefore it is inadmissible in law. Ofcourse, the learned counsel would fairly state that the other materials available in Ex.P27, which is not inculpatory in nature, can be treated as admissible evidence to show the conduct of the accused as well as the presence of witnesses. But, however, the learned counsel would reiterats his submission stating that entire Ex.P.27 is inculpatory in nature and therefore, it cannot be looked into at all. There was one another accused by name Palani and he was also shown to have participated in the Crime. He was shown to have been done to death by way of retaliation even before the final report was filed. P.Ws.1 and 2 could not have been the eyewitnesses at all to the occurrence, since their presence in the early hours of the occurrence time is highly unnatural. The evidence of P.W.6 that the accused gave an extra judicial confession to him is far from

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convincing and there is no reason at all as to why the accused should go and confess to P.W.6. In any event, the extra judicial confession by itself is a very weak piece of evidence and therefore, this Court has to necessarily exclude from consideration the oral extra judicial confession stated to have been given by the accused to P.W.6. We heard the learned Addition Public Prosecutor on the above points.

10. Let us now examine the pros and cons for the prosecution case in the light of the arguements advanced by the learned counsel on either side. Let us address ourselves first to the question as to whether Ex.P.27 is hit by Section 25 of the Evidence Act. To answer this question, it is better, we state here under the sum and substance of Ex.P.27. Ex.P27 is a lengthy statement. A perusal of the same shows that the accused had confessed in that statement that he along with his nephew Palani had murdered his cousin Perumal. He had also disclosed in that statement the motive which prompted him to commit the crime and it is also admitted there, that he had brought the severed head along with the weapon of offence used in committing the crime to the police station. Therefore, there cannot be any difficulty at all in holding that this portion of Ex.P.27, which is in the nature of confession is in-admissible in evidence. But, the question is, because of this confession in Ex.P.27, should Ex.P.27 in entirety be eschewed from consideration?. Courts have held that excluding the inculpatory portion viz., the confession portion of the statement, if there are other materials on record, which is not in the nature of a confession, it could always be made use of either to show the conduct of the accused or to show the existence of certain facts therein. The Supreme Court in BANDLAMUDDI ATCHUTA RAMAIAH AND OTHERS VS. STATE OF A.P.(1997 SUPREME COURT CASES(CRI) 128) had held that the statement given by the accused to the police, which is in the nature of confession, cannot be made use of at all for any purpose unless the maker offers himself as an witness. The Supreme Court had also held that the said statement can be used for the limited purpose as an admission under Section 21 of the Evidence Act against the maker alone unless the said admission does not amount to confession. A perusal of Ex.P.27 shows that P.Ws.1 and 2 were following the deceased and it is an admission made by the accused. Therefore, the said admission admitting the presence of P.Ws.1 and 2 can be used in evidence as an admission made by the accused and the said admission is not in the nature of a confession. He had also admitted the presence of P.W.3 in the police station. Therefore, on the principles as set out above, we will have to necessarily hold that Ex.P.27 is admissible in evidence as far as it contains the admission made by the accused admitting the presence of P.W.3 in the police station. Therefore, we state here under, at the risk of repetition, that this Court looks into Ex.P.27 only so far as it relates to the admission of the accused contained therein admitting the presence of P.Ws.1 and 2 at the scene of occurrence and P.W.3 at the Police Station. For all the reasons, the above referred to admission in Ex.P.27 do not stand eschewed from our consideration. Under these circumstances, we are not inclined to hold that the entirety of Ex.P.27 should be excluded from consideration.

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11. The prosecution had definitely established in this case, that Perumal was done to death due to homicidal violence. P.W.7 did post-mortem on the dead body of Perumal and the contents of Ex.P.7, the post-mortem report, establishes the cause of death as due to homicidal violence. P.W.12 is another forensic Professor of medicine, who on examining the bones of the severed head and the bones of the trunk opined that they belong to one and the same person. Further, the prosecution had also established that the severed head is that of Perumal, whose trunk was found else where. To decide as to whether the prosecution has to succeed in their mission of establishing the guilt of the accused, this Court has to see the evidence of P.Ws.1, 2 and 6. P.Ws.1 and 2 are the sisters of the deceased. We have already noted that their presence at the scene of occurrence stands admitted by the accused in Ex.P.27 and we have also held that since the said admission is not in the nature of a confession, it can be made use of against the maker viz., the accused. The evidence of P.Ws.1 and 2 show that they are the children of their father through his first wife while the accused is the son of their father through his second wife. We have already extracted the evidence of P.W.1 in the earlier portion of this judgment, which details the property dispute between the two groups and the dispute over irrigation from a common well and as a result of which, the animosity which the accused had developed against the deceased. In the above context only, the occurrence is said to have taken place. The evidence of P.Ws.1 and 2 without any doubt establishes the guilt of the accused in perpetrating the crime of their younger brother. Though they have been cross-examined, we do not find that their evidence regarding the occurrence proper is crippled in any manner so as to enable this Court to even doubt their version. Therefore, we have no difficulty at all in agreeing with the learned Addition Public Prosecutor that the evidence of P.Ws.1 and 2 establishes the guilt of the accused beyond any controversy.

12. P.W.6 is the other witness to whom the accused is shown to have given the extra judicial confession. P.W.6 is not a stranger to the accused since his evidence shows that the accused was employed under him. P.W.6 is a respectable witness owning lands and a sugarcane crushing unit. His evidence shows that at about 7.30 a.m. on 26.1.1996 (the occurrence took place around 6.00 a.m.), the accused appeared before him and confessed that he murdered Perumal and he has brought his severed head with him along with the weapon. There is nothing unusual in the accused making the extra judicial confession before P.W.6. The accused would have had the confidence and trust in P.W.6 because P.W.6 is none else than his employer. Under these circumstances, we do not find anything unusual in the accused going and confessing to P.W.6 about the crime committed by him. We also find that P.W.6 also had not acted in any unusual manner by not choosing to see the severed head and instead advising the accused that

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he had no business in his crushing unit but he should only go to the police station to surrender. His evidence also shows that since the accused said that he had no money, he gave him a sum of Rs.10/- and sent him away so as to go to the police station. Once again we find from his evidence in cross that nothing much at all, had been elicfited to disbelieve the extra judicial confession stated to have been given by the accused to him. We are fully aware as laid down by the Supreme Court in a number of judgments that the extra judicial confession by itself is a very weak piece of evidence. We are also fully aware that Courts have held that though the extra judicial confession by itself is a weak piece of evidence, yet a conviction can be based on that material alone, provided it passes the test on the touchstone of reliability and credibility. In this case, we do not find any suspicious circumstances in the evidence of P.W.6, which would make us to doubt the extra judicial confession stated to have been given by the accused to him. It is not as though the prosecution is pressing in this case only on the extra judicial confession. Admittedly there is direct evidence of eyewitnesses namely, P.Ws.1 and 2, about which, we have already dealt with. The conduct of the accused taking the severed head to the police station is spoken to by P.W.3. P.W.3's presence in the police station stands admitted by the accused in Ex.P.27 and since that admission is not in the nature of a confession, there is no difficulty at all in using that admission also against the accused. Therefore, it is clear from the above materials namely, evidence of P.W.s 1, 2, and the evidence of P.W.6, disclosing the extra judicial confession, that the prosecution had definitely established the guilt of the accused. In addition to the above, we find M.Os.10, 11 and 12 namely, shirt, dhoti and inner wear of the deceased removed from the dead body after post-mortem are shown to contain human blood of 'B' group. M.O.3 is the blood stained lungi of the accused, which was recovered in the police station by P.W.13 in the presence of P.W.3. That lungi is also shown to contain human blood of 'B' group. In addition to above, M.O.2, is the blood stained bed-spread, in which, the severed head was concealed when the accused reached the police station and that is also found to contain human blood of 'B' group. Ex.P13 is the Serologist's report. The personal cloth recovered from the accused namely lungi; clothes that were worn by the deceased, which were removed after post-mortem; the bed-spread in which the severed head was found covered by the accused when he reached the police station, all contain human blood of 'B' group. Therefore, it is clear that this would be an additional piece of evidence to hold that the accused and the accused alone is the guilty of the crime, since admittedly, the accused has not come out with any explanation as to how his lungi is shown to contain human blood of 'B' group, which tallies with the blood group of the deceased.

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13. For all the reasons stated above, we find no infirmity in the judgment under challenge and accordingly it is sustained and the appeal is dismissed.

Msk

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To

1. The I Additional Sessions Judge, Krishnagiri, Dharnmapuri District.
2. -do-thro' the Principal Sessions Judge, Dharmapuri District, Krishnagiri.
3. The District Collector, Dharmapuri District.
4. The Director General of Police, Mylapore, Madras-4.
5. The Superintendent of Central Prison, Vellore.
6. The Inspector of Police, Mathikonepalayam Police Station, Dharmapuri District.
7. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr.R.Thamarai Selvan, Advocate, SR NO.14532.

Crl.A.No.1231 of 2003

HPR(CO)
RVL 06.04.2006

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